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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/459,522	12/13/1999	CHET M. CRUMP	041861-01500	1246
23556	7590	03/31/2006	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC.			EREZO, DARWIN P	
401 NORTH LAKE STREET			ART UNIT	
NEENAH, WI 54956			PAPER NUMBER	

3731

DATE MAILED: 03/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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## Office Action Summary

Application No.

09/459,522

Applicant(s)

CRUMP ET AL.

Examiner

Darwin P. Erez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2006.
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18 is/are allowed.
- 6) ☒ Claim(s) 1, 4-17 and 19-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4-17 and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,343,857 to Schneider et al.

3. As to claims 1, 4-10, 15-17 and 19-21, Schneider teaches an apparatus comprising a catheter **23**; a manifold **10**; and a valve **20,19** disposed in the manifold, the valve being configured to selectively limit the withdrawal of air from the ventilation circuit, wherein the valve is movable between a first position and a second position (distal or proximal is irrelevant without clearly defining the spatial orientation; wherein the valve is a flap valve that is fully capable of being opened by the catheter in the following process:

-advancing catheter **23** past adapter **11** so that the catheter would be located outside the adapter (i.e., as shown in Fig. 3, moving the catheter to the left prior to connecting the adapter to the manifold);

-the catheter **23** will then be the first structure to engage valve **20,19** when the adapter and manifold are connected as per the modification above.

-therefore, the catheter, manifold and the valve will form an integrated unit (shown in Fig. 4) and would not a separate valve opening member.

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Schneider also teaches the flap valve comprising at least one protrusion (tip of valve **20,19**); wherein the apparatus further comprises a catch **19** to engage the flap as is drawn into the second, proximal position, and to retain the flap in the second position (member **19** engages flap **20**, as seen in Fig. 2, and retains flap **20** in the closed, second position); wherein the flap **20** is pivotably connected to the manifold; wherein the flap is generally disk-shaped because the valve is located within port **15**, which is circular; wherein the valve has an open position (as seen in Fig. 4) and a closed position (as seen in Fig. 2) wherein friction maintains the valve in the closed position; wherein the valve has an aperture (as seen in Figure 4, where the catheter **23** passes through) and the flap disposed to selectively cover the aperture; wherein the apparatus has a collar **33** disposed in the manifold having an aperture; wherein the collar including a port **33** for injecting liquid; wherein the apparatus further comprises a suction catheter **23** having distal end; a protective sleeve **22** surrounding the catheter; a manifold **10,11** connected to the protective sleeve and having means for accommodating inspiration and expiration of respiratory gases **13,14**; and a valve **16** connected to the manifold and pivotally moveable with respect thereto for engaging the distal end of the catheter to minimize the amount of air being drawn thereto in responsive to suction through the catheter wherein the valve comprises a flap **20** and wherein the valve further comprises at least one protrusion on a surface of the valve that is fully capable of engaging a catheter inserted in the steps recited above; wherein the valve comprising a pivotable flap **20**; wherein the wherein teaches a valve comprising an aperture (as seen in Figure 4, where the catheter **23** passes through); wherein the apparatus further comprises a

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locking member **19** disposed in communication with the flap **20** for selectively preventing movement of the flap (as seen in Fig. 2, member **19** engages flap **20** and prevents further movement inwardly) and wherein the locking member comprises a projection extending inwardly; and wherein the locking member comprises a force-fit coupling between the flap and the catheter.

4. As to claims 11-14, Schneider teaches an endotracheal catheter system comprising a catheter **23** having a distal end; a ventilator manifold **10** disposed in communication with the catheter such that the catheter may be advanced through the manifold into the respiratory system of the patient and withdrawn from the respiratory system of the patient through the manifold; and a valve **16** for at least partially occluding the distal end of the catheter (see Fig. 4), the valve being configured to frictionally engage the distal end and thereby occlude the distal end; and wherein the valve is still fully capable of being opened by the catheter in the following process:

- advancing catheter **23** past the adapter **11** so that the catheter would be located outside the adapter (i.e., as shown in Fig. 3, moving the catheter to the left prior to connecting the adapter to the manifold);

- the catheter **23** will be the first structure to engage the valve **20,19** when the adapter and manifold are connected as per the modification above.

- therefore, the catheter, manifold and the valve will form an integrated unit (shown in Fig. 4) and would not a separate valve opening member.

Schneider also teaches the valve comprising a flap **20** comprising at least one protrusion (see attached Figure) on at least one surface of the valve; wherein the flap

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**20** is configured to engage the distal end of the catheter via the protrusion (see Fig. 4); wherein the system further comprises a first wiper seal **24** and a second wiper seal **27** disposed about the catheter when the catheter is advanced in the manifold; wherein the catheter is retractable so that the distal end of the catheter is disposed proximally from the first wiper seal and distally from the second wiper seal.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider et al in view of US 6,168,758 to Forsberg et al.

Schneider fails to specifically teach the type of material the valve is constructed of. Forsberg et al. discloses a liquid assay device comprising a valve composed of polyether block amides (col. 6, lines 38-49). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use any well known material, including the polyether block amides of Forsberg et al. or the recited limitations of the claims, because it is a mere substitution of one valve material for another. Also, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of choice. *Sinclair & Carroll Co. V. Interchemical Corp.*, 327, 65 USPQ 297 (1945) also note *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

***Allowable Subject Matter***

7. Claim 18 is allowed over the prior art of record.

***Response to Arguments***

8. Applicant's arguments filed 1/13/06 have been fully considered but they are not persuasive.

The applicant's arguments are directed towards the Examiner's interpretation of the Schneider reference. It was argued that the Schneider reference does not anticipate the claims. However, as stated by the applicant in page 8 of the remarks, "apparatus claims must be distinguished from the prior art in terms of structure rather than function". As such, Schneider teaches all the recited structural elements that are rejected under 102. As shown above, Schneider teaches a catheter, a manifold, a flap valve having a protrusion. The applicant argues that the protrusion taught by Schneider is not the same as the protrusion recited in the claims. However, the claim merely states a general "protrusion", which is any structure that protrudes irrespective of the shape. Thus the protrusions on the end portion of valve 19, 20 is viewed as a protrusion.

As to the arguments regarding the operability of the Schneider device in view of the Examiner's interpretation of the device, it is noted that in an anticipation rejection, only the structural limitations are given patentable weight and not the function of the prior art device. Therefore, Schneider teaches all the structural limitations rejected under USC 102 and that the structural elements of Schneider are fully capable of performing the recited function. The rejection under USC 102 above clearly states how

the Schneider device is able to perform the recited functions and is not a true 103 modification. It merely explains how to manipulate the recited structural limitations to perform the recited function. If the prior art structure is capable of performing the intended use, then it meets the claim.

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erezzo whose telephone number is (571) 272-4695. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**GLENN K. DAWSON  
PRIMARY EXAMINER**

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